RECENT CASES

BILLS AND NOTES—PAYMENTS—RIGHT TO RECOVER.—ISAACS v. KOBRE, 145 N. Y. S., 919.—Defendant purchased a note on June third, which was payable on May third of the same year. The note being unpaid, defendant informed plaintiff, an indorser, that the note was payable on June third, the day of the purchase. As both parties labored under a mutual mistake, the plaintiff paid the note, but on receiving it discovered the mistake. *Held,* as the plaintiff had been discharged of his liability by the failure of the holder to protest it when not paid when due, the plaintiff might recover his payment.

Where the indorser paid a check without knowledge of the facts which discharged him from all liability, he may recover the money so paid. *Martin v. Campbell,* 160 N. Y. 190. If an indorser of a note relying upon a notice received from a notary public that the note has been dishonored, and being called upon to pay the note, when in fact a proper demand has not been made upon the maker, such payment is made under a mistake of fact and the money so paid may be recovered. *Talbot v. National Bank of Commonwealth,* 129 Mass. 67.

COURTS—OPINIONS—"DICTUM."—DUNCAN v. BROWN, 139 PAC. (N. M.) 140.—*Held,* wherever a question fairly arises in the course of a trial, and there is a distinct decision of such question, the ruling of the court in respect thereto cannot be called mere *dictum.*

Remarks in an opinion, not necessary to the decision of the case, are *dicta,* and have no binding force. *In re Klock,* 51 N. Y. S. 879, a judicial opinion on a point not necessary to the decision of the question before the court is *dictum,* and has no binding force. *People v. Leubischer,* 54 N. Y. S. 869. The determination of a matter which is involved in the litigation and discussed at the bar is not mere *dictum,* even though it is only indirectly involved in the discussion of the question on which the case turns. *Lancaster County v. McDonald,* 73 Neb. 453. Every proposition of law enunciated, if actually involved in the facts is to be taken as a principal of law *stare decisis. Maddox v. U. S.,* 5 Ct. Cl. 372.

FRAUDS—STATUTE OF—PARTY TO BE CHARGED.—KAISER v. JONES, 163 S. W. (KY).—Plaintiff contracted to sell land to the defendant but the defendant alone signed the contract and the vendor sued for damages for the breach. Held, that the words "the party to be charged" in the statute of frauds means the vendor, and if the vendee alone has signed no action can be maintained on the contract.